

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANAIT KHACHIKYAN,)	No. CV 14-00304-VBK
)	
Plaintiff,)	MEMORANDUM OPINION
)	AND ORDER
v.)	
)	(Social Security Case)
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the Administrative Record ("AR") before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified AR.

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 occasional public contact." (AR 26.)

2 In determining Plaintiff's mental RFC, the ALJ reviewed and
3 summarized various consultative and treatment records, and also cited
4 the opinion of a non-testifying State Agency psychiatrist. The ALJ
5 determined to accord substantial weight to the opinion of one
6 Consultative Examiner ("CE"), Dr. Riahinejad, because he found it to
7 be consistent with the record as a whole. For the same reason, he gave
8 substantial weight to the opinion of the State Agency psychiatrist.
9 (AR 30.) Plaintiff takes issue with the weight accorded to these
10 various opinions, and also asserts that the ALJ failed to give
11 specific and legitimate reasons to reject the opinion of her treating
12 psychiatrist, Dr. Yegiazaryan.

13 The time line of treatment for Plaintiff's mental health issues
14 is somewhat sporadic. As the ALJ noted, the records indicate that
15 Plaintiff was first seen in Los Angeles County USC Medical Center
16 emergency room for depression in November of 2008, at which time she
17 underwent a psychiatric evaluation, was diagnosed with depression, and
18 was prescribed various antidepressant medications. (AR 28, citing AR
19 198-244.) According to those records, Plaintiff's mental status
20 examination indicated normal hygiene and grooming; cooperative
21 behavior; an awake and alert level of consciousness; fair memory;
22 normal speech; dysphoric and crying mood; constricted affect; linear
23 associations; no hallucinations or delusions or suicidal ideation. She
24 had fair impulse control and insight and judgment, and indicated that
25 she wanted medications. (AR 244.)

26 It was not until three years later, in March 2011, that Plaintiff
27 had an initial assessment at the San Fernando Mental Health Center at
28 which time she indicated she had received no past treatment from a

1 psychiatrist. (AR 28, 313-318.) She received subsequent treatment at
2 that facility. The records indicate that she reported feeling a little
3 better in May and July of 2011. (AR 29, 324, 326.) Indeed, the report
4 of a social worker from July 2011 reflected that Plaintiff had a
5 euthymic mood,¹ was not undergoing stressful situations in her life,
6 and had a "good spirit." (AR 319.)

7 On August 19, 2011, Plaintiff was referred by the Department of
8 Social Service for a consultative psychological evaluation ("CE"). (AR
9 331-336.) Dr. Riahinejad performed an examination, and also obtained
10 subjective reporting from Plaintiff in which she indicated she has
11 been depressed since 2002, after she underwent a complicated
12 hysterectomy, following which she lost her brother and then her mother
13 in 2005 and 2009 respectively. She indicated she is becoming
14 increasingly depressed, anxious and fearful, and that she was taking
15 various medications prescribed by a psychiatrist that she was seeing.
16 (AR 332.) Dr. Riahinejad performed a test which ruled out malingering
17 (AR 333), and offered a diagnostic impression on Axis I of bipolar
18 disorder, depressed type. Dr. Riahinejad's "Prognostic Impression" in
19 his report states the following:

20 "[Plaintiff] is capable of managing funds on her own
21 behalf. She is currently able to understand, remember and
22 carry out simple and repetitive instructions. She could have
23 moderate difficulty understanding, remembering and carrying
24 out complex and detailed instructions. Her pace is slow. She
25 might have difficulty with pace in fast-paced types of
26 positions.

27
28 ¹ Normal non-depressed, reasonably positive mood (Wikipedia).

1 [Plaintiff] is tearful. She may have difficulty
2 relating with other people due to her tearfulness. She also
3 has medical conditions which may interfere with her
4 persistence, for which she is deferred to medical
5 specialist."

6 (AR 335.

7
8 In September 2011, State Agency physician Dr. Tashjian made an
9 assessment of Plaintiff's mental residual functional capacity,
10 indicating the following: limitations in understanding and memory; not
11 significantly limited in ability to remember locations and work-like
12 procedures and to understand and remember very short and simple
13 instructions; moderate limitations in ability to understand and
14 remember detailed instructions; limitations in sustained concentration
15 and persistence; no significant limitations in ability to carry out
16 short and simple instructions; moderate limitation in ability to carry
17 out detailed instructions; moderate limitation in ability to maintain
18 attention and concentration for extended periods; moderate limitation
19 in ability to perform activities with no schedule, maintain regular
20 attendance; no significant limitation in ability to sustain ordinary
21 routine without special supervision, to work in coordination with
22 others without being distracted, to make simple work-related
23 decisions; and to complete a normal workday and workweek. (AR 74-75.)

24 Dr. Tashjian's opinions were essentially consistent with Dr.
25 Riahinejad's conclusions.

26 Also considered by the ALJ were the opinion of psychiatrist Dr.
27 Arora, who performed a psychiatric CE at the request of the Department
28 of Social Services on September 26, 2010. (AR 258-262.) Dr. Arora took

1 a complete history from Plaintiff and appears to have performed a
2 brief mental status examination. The diagnosis on Axis I was mood
3 disorder not other specified. Dr. Arora's conclusions were that, based
4 on her interview with Plaintiff, Plaintiff's ability to understand,
5 remember and perform instructions is moderately impaired for simple
6 and moderately complex tasks. Dr. Arora concluded that persistence
7 cannot be fully evaluated in the type of evaluation he performed, but
8 that Plaintiff appears to have moderate psychological limitations that
9 would significantly interfere with her ability to complete a normal
10 workday or week, and the quality and quantity of work performed. She
11 would have an unimpaired ability to relate to and interact with
12 coworkers and colleagues. (AR 262.) It is noted that Dr. Arora
13 examined Plaintiff before she began to receive psychiatric treatment.
14 (On the other hand, Dr. Riahinejad examined Plaintiff after the
15 commencement of this treatment.) Similarly, Dr. Tashjian reviewed the
16 record after Plaintiff began treatment and after she saw Dr.
17 Riahinejad.

18 Treating psychiatrist Dr. Yegiazaryan provided a letter report
19 directed to the attention of the Social Security Administration in
20 which she indicated that Plaintiff is a client of the San Fernando
21 Mental Health Center, admitted to outpatient services on April 4,
22 2011, diagnosed with major depressive disorder and post traumatic
23 stress disorder. She receives medication management, therapy, and case
24 management services. Dr. Yegiazaryan indicated that, "Apparently, her
25 depression has been treatment resistant because she has showed [sic]
26 minimal improvement on her symptoms inspite [sic] of taking all
27 medications and being compliant. She remains disabled and
28 dysfunctional; there is a substantial decline in her level of

1 functioning in general ..." (AR 343.)

2
3 **A. Applicable Law.**

4 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)
5 and §416.920a(c)(3)(4) mandate that consideration be given, among
6 other things, to activities of daily living ("ADLs"), social
7 functioning; concentration, persistence, or pace; and episodes of
8 decompensation. These factors are generally analyzed in a Psychiatric
9 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the
10 sequential evaluation to determine if a claimant is disabled under the
11 Listing of Impairments; however, the same data must be considered at
12 subsequent steps unless the mental impairment is found to be not
13 severe at Step Two. See SSR 85-16.

14 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require
15 consideration of "all relevant and available clinical signs and
16 laboratory findings, the effects of your symptoms, and how your
17 functioning may be affected by factors including, but not limited to,
18 chronic mental disorders, structured settings, medication and other
19 treatment."²

20 SSR 85-16 suggests the following as relevant evidence:

21 "History, findings, and observations from medical
22 sources (including psychological test results), regarding
23 the presence, frequency, and intensity of hallucinations,

24
25 ² 20 C.F.R. §404.1545(c) and §416.945(c) also require
26 consideration of "residual functional capacity for work activity on a
27 regular and continuing basis" and a "limited ability to carry out
28 certain mental activities, such as limitations in understanding,
remembering, and carrying out instructions, and in responding
appropriately to supervision, co-workers, and work pressures in a work
setting."

1 delusions or paranoid tendencies; depression or elation;
2 confusion or disorientation; conversion symptoms or phobias;
3 psycho-physiological symptoms, withdrawn or bizarre
4 behavior; anxiety or tension. Reports of the individual's
5 activities of daily living and work activity, as well as
6 testimony of third parties about the individual's
7 performance and behavior. Reports from workshops, group
8 homes, or similar assistive entities."

9
10 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)
11 that the ALJ must consider the extent to which the mental impairment
12 interferes with an "ability to function independently, appropriately,
13 effectively, and on a sustained basis" including "such factors as the
14 quality and level of [] overall functional performance, any episodic
15 limitations [and] the amount of supervision or assistance []
16 require[d]."

17 Pursuant to the September 2000 amendments to the regulations
18 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ
19 is no longer required to complete and attach a PRTF. The revised
20 regulations identify five discrete categories for the first three of
21 four relevant functional areas: activities of daily living; social
22 functioning; concentration, persistence or pace; and episodes of
23 decomposition. These categories are None, Mild, Moderate, Marked, and
24 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must
25 incorporate pertinent findings and conclusions based on the PRTF
26 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show
27 "the significant history, including examination and laboratory
28 findings, and the functional limitations that were considered in

1 reaching a conclusion about the severity of the mental impairment(s).
2 The decision must include a specific finding as to the degree of
3 limitation in each of the functional areas described in paragraph (c)
4 of this section."

5
6 **B. Analysis.**

7 The ALJ determined to accord primary weight to the opinions Dr.
8 Riahinejad, who examined Plaintiff, and Dr. Tashjian, who examined the
9 records. As to Dr. Arora and Dr. Yegiazaryan, the ALJ gave their
10 opinions little weight. Despite that, even if the ALJ had not
11 depreciated Dr. Arora's opinion, the Court notes that the MRFC as
12 assessed by the ALJ would not have been inconsistent with Dr. Arora's
13 conclusions. In other words, according to the regulations, the
14 moderate impairments that Dr. Arora found would not have precluded the
15 ALJ's assessment that Plaintiff was capable of simple work with only
16 occasional public contact. In any event, the ALJ did depreciate Dr.
17 Arora's conclusions, finding that they largely relied on Plaintiff's
18 subjective complaints which the ALJ later found to be not fully
19 credible. (See Discussion, infra.)³ This was a permissible basis for
20 evaluation of Dr. Arora's opinion. See Batson v. Commissioner of
21 Social Security, 359 F.3d 1190, 1195 (9th Cir. 2004). Indeed, as the
22 Court has noted, the mental status examination conducted by Dr. Arora
23 appears to have been extremely brief (see AR at 260-261), and much of
24 Dr. Arora's conclusions seem to depend on what Plaintiff reported
25 during what he denominated his "interview" with her. (See AR at 262.)

26
27 ³ The Court's reversal of the ALJ's Decision, based on the
28 credibility issue, may impact the determination as to the effect of
Plaintiff's mental impairment on the disability issue, on remand.

1 With regard to the letter from Dr. Yegiazaryan, the ALJ also
2 depreciated that opinion. Dr. Yegiazaryan did not set forth any
3 specific functional limitations (AR 343), and she rendered opinions as
4 to Plaintiff's ultimate disability which are reserved to the
5 Commissioner. But more importantly, the ALJ was not incorrect in
6 noting that Dr. Yegiazaryan's conclusions were largely inconstant with
7 the progress notes from Dr. Yegiazaryan's own facility which indicate
8 that, in fact, Plaintiff was making substantial progress with her
9 psychiatric treatment. (See, e.g., AR at 319.) Moreover, Dr.
10 Yegiazaryan's letter of March 2012 postdates Plaintiff's last mental
11 health treatment record from Dr. Yegiazaryan's facility, which was
12 from July 2011, almost a year earlier. (AR 313-330, 343.) Based on
13 staleness alone, the ALJ was justified in depreciating Dr.
14 Yegiazaryan's opinion.

15 Based on the foregoing, the Court concludes that the ALJ
16 appropriately analyzed somewhat conflicting evidence as to Plaintiff's
17 mental health, and for legitimate reasons, certainly as stated in the
18 Decision, depreciated certain of those opinions and accepted others.
19 On that basis, the Court does not conclude that the ALJ erred in
20 assessing the mental health opinions.

21 22 II

23 THE ALJ ERRED IN DEPRECIATING

24 PLAINTIFF'S CREDIBILITY AS TO SUBJECTIVE SYMPTOMS

25 In a Disability Report, Plaintiff stated, "I am in constant pain
26 unable to sleep or drive or have communication more than 3 min.
27 constant worry about things that does not even their." [Sic.] In her
28 testimony at the administrative hearing, Plaintiff indicated that she

1 has excruciating physical pain, body pain, and headaches, and really
2 bad back pain. She is able to walk for 30 minutes, but cannot stand
3 for an hour and cannot sit for two hours without alternating
4 positions. She can lift half a gallon but not a gallon of milk. (AR
5 50-52.)

6 The ALJ found that Plaintiff's credibility is at variance with
7 the weight of the evidence, based on a medical treatment history that
8 is not commensurate with her allegations of excruciating pain and
9 debilitating mental symptoms; a lack of mental health treatment until
10 April 2011; receipt of unemployment benefits for two years; a lack of
11 interest in working; testimony that her mental condition had
12 deteriorated, which was contradicted by her treatment records; and
13 finally, observations made at the Social Security field office. (AR
14 31.)

15 Plaintiff asserts that the ALJ failed to articulate legally
16 sufficient reasons to depreciate or reject her testimony as to
17 subjective symptoms.

18 The credibility assessment factors are well known and are set
19 forth in 20 C.F.R. §§ 404.1529(c); 416.939(c); Social Security Ruling
20 ("SSR") 96-7p, and opinions of the Ninth Circuit of long standing,
21 such as Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989), and Thomas
22 v. Barnhart, 278 F.3d 947, 958-959 (9th Cir. 2002). For that reason,
23 they need not be restated here.

24 The Court must evaluate the ALJ's credibility determination based
25 on the reasons stated in the Decision itself. In this case, the ALJ
26 enumerated the reasons, which the Court will summarize:

- 27 1. Plaintiff's medical treatment history and the number of
28 visits she had are not commensurate with her allegations of

1 excruciating pain and debilitating mental symptoms. For
2 instance, she relied upon medications for her back and body
3 pain and did not have any surgery for her back;

4 2. Plaintiff's lack of any mental health treatment until around
5 April of 2011 is inconsistent with her allegations of mood
6 changes. If her mental symptoms were as serious as she
7 alleged she would have received earlier mental health
8 treatment;

9 3. Plaintiff's receipt of unemployment benefits for two years
10 reflects negatively on her overall credibility;

11 4. Plaintiff stated she was not interested in looking for work;

12 5. The Social Security field office did not notice any
13 difficulty with Plaintiff's normal functioning.

14
15 With regard to Plaintiff's treatment history both for physical
16 and mental issues, the ALJ's observation that Plaintiff's treatment
17 was overly conservative in view of her subjective reporting and
18 debilitating pain, and that she would be expected to have had back
19 surgery, is simply a lay conclusion that is unsupported by medical
20 records. Further, the ALJ did not call upon the assistance of a
21 medical expert to provide such information. In particular, suggesting
22 that she should have had back surgery, without providing any
23 indication of a medical basis to rely upon that conclusion,
24 constitutes error. As Plaintiff correctly points out in her portion of
25 the JS, there is no requirement in any Social Security Regulation, or
26 other rule or case precedent, that requires that an individual must
27 receive surgery for back pain. In particular, in Plaintiff's case, the
28 medical records indicate osteoporosis and degenerative bone

1 conditions, which may certainly not be amenable to back surgery.

2 With regard to the ALJ's conclusion that Plaintiff did not
3 receive mental health treatment until April 2011, after she was first
4 diagnosed with mental health issues in 2008, the record is at best
5 ambiguous. Before Plaintiff was treated at San Fernando Mental Health,
6 there are indications that she received treatment for depression from
7 All for Health in July 2010, September 2010, and February 2011. (AR
8 271, 275, 278.) Indeed, at the hearing, Plaintiff tried, apparently
9 without success, to explain to the ALJ that she in fact had received
10 mental health treatment before she was seen at San Fernando Mental
11 Health. In questioning Plaintiff at the hearing, the ALJ remarked that
12 Plaintiff had stopped working in 2009 and had "waited over two years
13 to, get treatment." Plaintiff responded, "I don't think I did." (AR
14 49.) Plaintiff indicated that she had been treated at "all for health"
15 [sic], and in fact named one of the doctors. The ALJ responded, "But,
16 they're not psychiatrists. They're just regular doctors." (AR 49.)
17 From this testimony, the Court must conclude that the ALJ was
18 factually incorrect in depreciating Plaintiff's credibility for
19 failing to seek mental health treatment for several years after her
20 2008 diagnosis. The fact that she may have been receiving mental
21 health treatment from doctors who were not psychologists or
22 psychiatrists is beside the point. Plaintiff could not be expected to
23 control which medical providers gave her services at the facility.
24 Thus, the Court will discard as valid this stated reason for
25 credibility assessment.

26 With regard to Plaintiff's receipt of unemployment benefits, the
27 ALJ concluded that the meaning of this was that Plaintiff held herself
28 out as employable, at the same time she claimed to be disabled. Again,

1 while the ALJ pressed this point at the hearing, Plaintiff indicated
2 that she really did not know that, in applying for unemployment, she
3 was indicating a willingness to work. (AR 54.)

4 The ALJ's citation to Plaintiff's statement that she had lost
5 interest in applying for work, as a reason to depreciate credibility,
6 does not stand as a valid reason. The statement is contained in an
7 isolated comment in the report of CE Dr. Arora under the heading "Work
8 History," where Dr. Arora indicates, "The claimant states that she
9 hasn't been looking for a job since then [her last job in 2009]
10 stating that she isn't interested." (AR 260.) There is absolutely no
11 context provided for this statement, and there was no discussion of it
12 at the time of the hearing. Whatever Plaintiff may have meant, if
13 indeed she made that exact comment to Dr. Arora, is entirely
14 uncertain. It is simply not a valid credibility assessment factor.

15 The ALJ also compared Plaintiff's own self assessment, that her
16 mental condition was worse at the time of the hearing as compared to
17 2009, when she stopped working, with the progress notes of the San
18 Fernando Mental Health Center. To some extent, this factor may be
19 characterized as a comparison of subjective reporting to objective
20 medical evidence. But, Plaintiff may have honestly felt that her
21 mental condition was generally worse than it was in 2009.⁴

22
23 ⁴ While the ALJ referred to Plaintiff's testimony that she was
24 getting worse, the hearing transcript does not provide a clear
25 indication of what Plaintiff may have meant by this, and the ALJ did
26 not clarify the issue. For example, during her testimony, Plaintiff
27 indicated that her "problem" concerning mental health began in 2005,
28 "and it started getting worse," and then "2009 and on it got worse."
(AR 47.) Later on in the hearing, Plaintiff was asked, "So, has your
condition improved?" The context of this testimony, however, was with
regard to both physical and mental health treatment, and Plaintiff
stated, "No. Actually, it's gotten worse." (AR 50.)

